

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION NO. 01-103

Resolution directing the Executive Officer to enter into a Memorandum of Understanding with the interested parties for technical and financial assistance in the development of Water Quality Attainment Strategies for the San Francisco Bay Region.

WHEREAS, This Memorandum of Understanding (MOU) memorializes the understandings of the Parties to this MOU regarding the development of Water Quality Attainment Strategies including Total Maximum Daily Loads (TMDLS) for the San Francisco Bay-Delta and its tributaries.

1. The development of Water Quality Attainment Strategies including TMDLS is required because the San Francisco Bay-Delta and its tributaries have been designated as impaired water bodies under Section 303(d) of the federal Clean Water Act [303(d) list]. Implementation of the National Toxics Rule, the California Toxics Rule and the State Implementation Policy must occur in conjunction with development of TMDLS;
2. The State Water Resources Control Board is primarily responsible for developing Water Quality Attainment Strategies including TMDLS through the nine regional water quality control boards. The collaborative approach for developing Water Quality Attainment Strategies including TMDLS described in this MOU will likely be more efficient and successful than the traditional programmatic approach traditionally used by state and local regulatory agencies. It is not the intention of the Parties to this MOU to limit collaborative discussion and analysis of pollutants to those pollutants on the 303(d) list;
3. By entering into this MOU, the Parties have expressed their desire to work collaboratively on the development and implementation of water quality attainment strategies including TMDLS. In order to facilitate these goals, the Parties will develop work plans, schedules for implementing the work plans, funding sources and monitoring programs;
4. Work carried out under this MOU will be done so in an inclusive manner that encourages participation by the Parties executing this MOU as well as other interested persons or organizations;
5. The Parties to this MOU will incorporate the concepts of adaptive management and sound science will be incorporated into development of Water Quality Attainment Strategies including TMDLS;
6. The Parties will ensure that regular public meetings provide a forum for comment from non-participating local and statewide interests and stakeholders, including but not limited to individuals or groups representing local environmental protection, environmental justice, recreation, Native American, and business community interests;

7. Pursuant to this MOU, the Parties will develop a Five-Year Plan (Plan) that identifies TMDLs on a pollutant basis, estimated annual and total costs, and completion schedule. The Plan may be amended at any time with the mutual consent of the Parties; and
8. Additional entities may be added to this MOU with the unanimous approval of the three Original Parties.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Board recognizes the importance of the effort to develop Water Quality Attainment Strategies for the waters within the San Francisco Bay Region; and
2. The Executive Officer is directed to sign this Memorandum of Understanding on behalf of the Regional Board.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 19, 2001.

Loretta K. Barsamian

LORETTA K. BARSAMIAN
Executive Officer

MEMORANDUM OF UNDERSTANDING

Among the

SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD
BAY AREA CLEAN WATER AGENCIES
BAY AREA STORMWATER MANAGEMENT AGENCIES ASSOCIATION

Regarding

DEVELOPMENT OF WATER QUALITY ATTAINMENT STRATEGIES FOR SAN
FRANCISCO BAY-DELTA AND TRIBUTARIES

This Memorandum of Understanding (MOU) memorializes the understandings of the Parties to this MOU regarding the development of Water Quality Attainment Strategies including Total Maximum Daily Loads (TMDLs) for the San Francisco Bay-Delta and its tributaries.

Background

The development of Water Quality Attainment Strategies including TMDLs is required because the San Francisco Bay-Delta and its tributaries have been designated as impaired water bodies under Section 303(d) of the federal Clean Water Act [303(d) list]. Implementation of the National Toxics Rule, the California Toxics Rule and the State Implementation Policy must occur in conjunction with development of TMDLs.

The State Water Resources Control Board is primarily responsible for developing Water Quality Attainment Strategies including TMDLs through the nine regional water quality control boards. The collaborative approach for developing Water Quality Attainment Strategies including TMDLs described in this MOU will likely be more efficient and successful than the traditional programmatic approach traditionally used by state and local regulatory agencies. It is not the intention of the Parties to this MOU to limit collaborative discussion and analysis of pollutants to those pollutants on the 303(d) list.

By entering into this MOU, the Parties have expressed their desire to work collaboratively on the development and implementation of water quality attainment strategies including TMDLs. In order to facilitate these goals, the Parties will develop work plans, schedules for implementing the work plans, funding sources and monitoring programs.

Definitions

- (a) "Original Party" and "Original Parties" refer to the three original signatories to this MOU: San Francisco Bay Regional Water Quality Control Board, Bay Area Clean Water Agencies, and Bay Area Stormwater Management Agencies Association. "Party" and "Parties" refers to the original three signatories and any other entities invited to join this MOU subsequent to its initial execution.
- (b) "RWQCB" refers to San Francisco Bay Regional Water Quality Control Board.
- (c) "BACWA" refers to Bay Area Clean Water Agencies
- (d) "BASMAA" refers to Bay Area Stormwater Management Agencies Association
- (e) "TMDLs" refers to Total Maximum Daily Loads. Section 303(d) of the federal Clean Water Act requires states to establish TMDLs for pollutants causing impairment (non-attainment of water quality standards) of listed water bodies. As such, a TMDL is the pollutant load level necessary to attain the applicable water quality standards. A complete TMDL refers to the process and elements associated with establishing a TMDL. Use of the term TMDL in this MOU refers to the complete TMDL. This includes, but is not limited to, problem statement, numeric target(s), source analysis, linkage analysis, wasteload and load allocations, implementation plan, monitoring plan, and Basin Plan amendment.

Activities and actions associated with establishing TMDLs include, but are not limited to: information and data gathering, analysis, and management; monitoring and modeling; development and implementation of water quality data standards including sampling and analysis; developing site-specific water quality objectives; impairment assessment; evaluation of allocation alternatives; developing water quality based effluent limitations; identification and evaluation of pollution prevention or control measures; stakeholder involvement processes; and scientific peer review processes.

- (f) "Water Quality Attainment Strategies" refers to development and implementation actions associated with implementing (attaining) water quality standards. Complete TMDLs are Water Quality Attainment Strategies, but Water Quality Attainment Strategies are not limited to 303(d) list pollutants. Any or all of the complete TMDL elements and related activities may apply to non-303(d) list pollutants. For example, they may be developed for pollutants for which threat of impairment provides cause for pollution prevention actions and related activities. Such pollutants have not met the criteria for 303(d) listing and are best addressed by actions not requiring a full TMDL.
- (g) "National Toxics Rule" refers to Federal Register Volume 57, pp 60848, December 22, 1992, 40 CFR Part 131.36(b); and as amended in Federal Register Volume 60, pp 22229, May 4, 1995.

- (h) "California Toxics Rule" refers to Federal Register Volume 65, pp 31681, May 18, 2000.
- (i) "State Implementation Policy" refers to the State Water Resources Control Board's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California", March 2, 2000.

Underlying Principles

- (a) Participation in this MOU is voluntary and any Party may withdraw at any time from this MOU by providing 30-day written notice to the other Parties, subject to conditions specified in separate contractual arrangements related to development of TMDLs and Water Quality Attainment Strategies.
- (b) Work carried out under this MOU will be done so in an inclusive manner that encourages participation by the Parties executing this MOU as well as other interested persons or organizations.
- (c) Execution of this MOU or participation in the activities contemplated by this MOU in no way waives any legal or contractual rights of participating Parties.
- (d) Execution of this MOU in no way limits the ability of any Party to pursue individual projects or obtain separate federal and state funding.
- (e) The Parties to this MOU will incorporate the concepts of adaptive management and sound science will be incorporated into development of Water Quality Attainment Strategies including TMDLs.
- (f) The Parties will ensure that regular public meetings provide a forum for comment from non-participating local and statewide interests and stakeholders, including but not limited to individuals or groups representing local environmental protection, environmental justice, recreation, Native American, and business community interests.
- (g) Pursuant to this MOU, the Parties will develop a Five-Year Plan (Plan) that identifies TMDLs on a pollutant basis, estimated annual and total costs, and completion schedule. The Plan may be amended at any time with the mutual consent of the Parties.
- (h) Each Party shall take all precautions necessary for the safety and prevention of damage to the property of the other Parties and for the safety and prevention of injury to persons, including other Party's employees, and third persons. All work shall be performed entirely at the individual Party's risk.

- (i) Additional entities may be added to this MOU with the unanimous approval of the three Original Parties.

Roles and Responsibilities of Parties

- (a) The RWQCB is responsible for the adoption of the Water Quality Attainment Strategies including TMDLs developed pursuant to this MOU.
- (b) The Parties will work cooperatively to develop Water Quality Attainment Strategies including TMDLs for pollutants on the 303(d) list, as well as Water Quality Attainment Strategies for mutually agreed upon pollutants that are not listed.
- (c) Each party is responsible for meeting all duties and obligation imposed upon it by law. This MOU in no way is to be construed to relieve any party from its responsibility for meeting all such duties and obligations.
- (d) Each Party shall designate a representative who shall be the primary contact for that Party and who, together with designated alternates, shall be a member of the Steering Committee described in (e), below.
- (e) A Steering Committee consisting of a representative from each of the Parties will meet not less than four times per calendar year for the purposes of providing public information, reviewing technical memoranda, and ensuring that all interests and concerns are considered in the development of the Water Quality Attainment Strategies including TMDLs. In addition, the Steering Committee shall:
 - 1. Develop principles and methods for management of funds and other assets for such work, acceptance and publication of work under the MOU, and for consensus-based decision-making.
 - 2. Develop means and methods of disseminating information among the Parties and to the public.
 - 3. Develop selection procedures for the addition of new parties.
 - 4. Develop any other procedures, criteria necessary or sub-committees for achieving the purposes of the MOU including the allocation of costs.
- (f) The Parties to this MOU will participate in data sharing efforts to increase knowledge about specific issues of Water Quality Attainment Strategies and TMDL development.
- (g) The Parties shall consult with non-participating agencies and the public with respect to the results of the assessment, subsequent agreements, and all other substantive matters related to the TMDLs.

- (h) Each Party to this MOU is responsible for consulting with that Party's respective constituencies with respect to the terms and conditions of this MOU, the results of the assessment, subsequent agreements, and all other substantive matters related to the development of the TMDLs.
- (i) The Parties will provide data and other relevant information related to the completion of the Water Quality Attainment Strategies and TMDLs in a timely fashion. Additionally, the Parties agree to participate in timely review and to provide comment on technical reports related to the completion of the Water Quality Attainment Strategies and TMDLs.

Funding and In-Kind Contributions

Expenses for activities performed by consultants will be paid from funds provided by the Parties. The Steering Committee will develop procedures and criteria for monetary and "in-kind" contribution, cost sharing, annual and five-year budgets and other fund uses, subject to the availability of appropriations and funding.

Term

This MOU will terminate five years from the date of execution by the Parties unless extended by mutual consent of the Parties.

Amendments

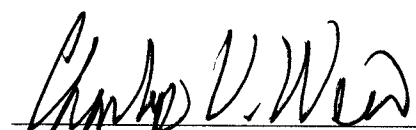
This MOU may be amended at any time with the unanimous approval of the three Original Parties.

Executed this 19 day of September, 2001 by:

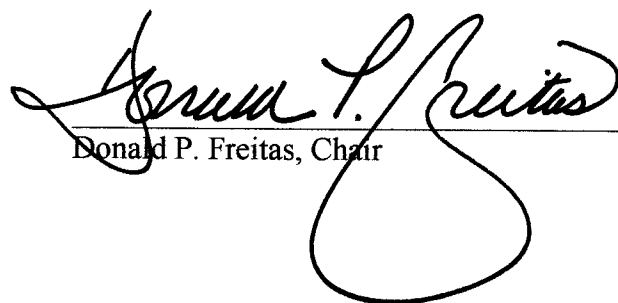
SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD

Loretta K. Barsamian
Loretta K. Barsamian, Executive Officer

BAY AREA CLEAN WATER AGENCIES

 8/23/01
Charles V. Weir, Chair

BAY AREA STORMWATER MANAGEMENT AGENCIES ASSOCIATION

 Aug. 23, 2001
Donald P. Freitas, Chair